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Public Prosecutor v Martinus Esterhuizen

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-05–34–02 OF 2014
ROHANA YUSUF, TENGKU MAIMUN AND AHMADI ASNAWI JJCA
26 JANUARY 2015

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Criminal procedure — Appeal — Appeal by prosecution — Appeal against reduced charge — Accused person initially charged for trafficking in 4,329g dangerous drugs under s 39B(2) of the Dangerous Drugs Act 1952 — High Court judge found accused person had raised reasonable doubt on prosecution case — Charge reduced to s 12(2) of the Dangerous Drugs Act 1952 — Accused person sentenced to 20 years imprisonment and 10 strokes of rotan — Whether prosecution proved its case beyond reasonable doubt under s 39B — Whether trial judge erred in amending charge to possession under s 12(2)

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The respondent was charged at the High Court for trafficking in 4,329g of methamphetamine, an offence under s 39B(2) of the Dangerous Drugs Act 1952 ('DDA'). While leaving the immigration counter at the airport, the respondent was seen carrying two bags. During the verification of the passport, the respondent attempted to escape with one of the two bags. However, he was successfully arrested by the immigration officers and handed to the immigration for further investigation. Further search on the bag revealed a laptop bag containing a dark-colored package which were later found to contain whitish crystalline substance. The chemist confirmed the substance to be 4,329g of methamphetamine. The respondent maintained that he had no knowledge of the drugs and that he had flew in to Singapore from Maputo, Mozambique. The respondent submitted that he was asked to carry the bag which contained huge sums of money to be delivered to two guys in Singapore, but that at the last minute he was asked to take the bag to Malaysia instead. The trial judge found that the respondent had raised a reasonable doubt on the prosecution's case. His Lordship amended the charge to one under s 12(2) of the Act. The respondent was sentenced to 20 years imprisonment and ten strokes of the *rotan*. Aggrieved with the trial judges' decision to reduce the charge to one of possession, the prosecution appealed. The prosecution's argument was that the prosecution has proved its case beyond reasonable doubt under s 39B and that the trial judge erred in amending the charge to possession under s 12(2) of the Act after the defence case.

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Held, setting aside order of the High Court and convicting and sentencing the respondent to death under original charge of trafficking.

(1) The trial judge had erred in two aspects, first, when His Lordship found that presumption of trafficking under s 37(da) of the DDA could not be invoked and secondly, when His Lordship relied on the case of *PP v Nik Ahman Aman bin Nik Mansor* in coming to the conclusion that there must be evidence on the element of transfer of control and custody of the drugs, before the definition of trafficking under s 2 of the Act could be applied (see para 8).

(2) There was no evidence on the transfer of control and custody of the drugs from the respondent to any other third parties. The learned trial judge erred in his reliance on the High Court decision in *Nik Ahmad Aman* when there were string of authorities decided by the Federal Court which held that by definition under s 2 of the Act, trafficking included carrying (see para 12).

(3) His Lordship did not invoke any of the presumptions, either presumption of possession under s 37(d) or presumption of trafficking under s 37(da) of the Act. His Lordship must have been satisfied with the evidence of the prosecution on the element of knowledge and custody and control of the drugs and the element of carrying, keeping and transporting the drugs from somewhere into Malaysia in coming to his decision that the prosecution had made out a prima facie case under s 39B of the Act (see para 9).

(4) The court failed to comprehend the trial judge's finding at the end of the defence on the presumption of trafficking when the presumption was not invoked by the trial judge at the end of the prosecution's case. By applying s 37(da) at the end of the defence case, the trial judge was reversing his earlier finding of trafficking under s 2 of the Act. In so doing, His Lordship had erred in his approach (see para 11).

(5) The respondent was in control and custody of the bag. In attempting to negate the element of knowledge of the drugs found in the bag, the respondent said that he was warned not to lose the bag as it contained money and that was the reason why he had left the backpack but he had to carry with him the bag when he went out of the Immigration Office (see para 14).

(6) The defence did not challenge that the respondent had left the bag at the dustbin when he was chased by SP7. The respondent had in fact parted with the bag although it was his defence that he had been warned not to do so as the bag contained huge sums of money. What the respondent failed to explain was, if he could not lose the bag, why then did he leave it at the dustbin. The absence of any explanation on this crucial aspect of his defence that the bag contained money showed that the respondent's version about the bag containing money instead of drugs was not credible or probable (see para 16).

[Bahasa Malaysia summary

Responden dituduh di Mahkamah Tinggi kerana mengedar 4,329g methamphetamine, satu kesalahan di bawah s 39B(2) Akta Dadah Berbahaya 1952 ('ADB'). Ketika meninggalkan kaunter immigresen di lapangan terbang, responden dilihat membawa dua beg. Sewaktu pengesahan pasport, responden cuba melarikan diri dengan salah satu dari dua beg tersebut. Walau bagaimanapun, dia telah berjaya ditangkap oleh pegawai immigresen dan diserahkan kepada pihak immigresen untuk siasatan lanjut. Carian selanjutnya ke atas beg mendedahkan satu bag laptop yang mengandungi pakej berwarna gelap yang mana kemudiannya didapati mengandungi bahan kristal putih. Ahli kimia mengesahkan bahan itu adalah 4,329g methamphetamine. Responden menegaskan bahawa dia tidak mempunyai pengetahuan terhadap dadah dan bahawa dia telah terbang masuk ke Singapura daripada Maputo, Mozambique. Responden mengemukakan bahawa dia telah disuruh untuk membawa bag mengandungi sejumlah besar wang untuk diserahkan kepada dua lelaki di Singapura, tetapi pada saat akhir dia telah diminta membawa beg tersebut sebaliknya ke Malaysia. Hakim perbicaraan mendapati responden telah menimbulkan keraguan munasabah terhadap kes pendakwaan. Yang Arif meminda pertuduhan kepada satu di bawah s 12(2) Akta. Responden dihukum penjara 20 tahun dan sepuluh sebatan rotan. Tidak berpuas hati dengan keputusan hakim perbicaraan kerana mengurangkan pertuduhan kepada satu pemilikan, pihak pendakwaan merayu. Hujahan pendakwaan adalah bahawa pendakwaan telah membuktikan kesnya melampaui keraguan munasabah di bawah s 39B dan bahawa hakim perbicaraan terkhilaf dalam meminda pertuduhan kepada pemilikan di bawah s 12(2) selepas kes pembelaan.

Diputuskan, mengetepikan perintah Mahkamah Tinggi dan menyabit serta menghukum responden dengan hukuman mati di bawah pertuduhan asal pengedaran:

(1) Hakim perbicaraan telah tekhilaf dalam dua aspek, pertama, apabila Yang Arif mendapati anggapan pengedaran di bawah s 37(da) ADB tidak boleh dilaksanakan dan kedua, apabila Yang Arif bergantung kepada kes *PP v Nik Ahman Aman bin Nik Mansor* dalam menyimpulkan bahawa perlu terdapat keterangan pada elemen perpindahan kawalan dan jagaan terhadap dadah, sebelum definisi pengedaran di bawah s 2 Akta boleh terpakai (lihat perenggan 8).

(2) Tiada keterangan terhadap perpindahan kawalan dan jagaan ke atas dadah daripada responden kepada mana-mana pihak ketiga. Hakim perbicaraan yang bijaksana terkhilaf dalam pergantungannya terhadap keputusan Mahkamah Tinggi dalam kes *Nik Ahman Aman* apabila terdapat rentetan daripada pihak berkuasa diputuskan oleh Mahkamah Persekutuan yang memutuskan bahawa dengan definisi di bawah s 2

Akta, pengedaran termasuk membawa (lihat perenggan 12).

(3) Yang Arif tidak menggunakan apa-apa anggapan, sama ada anggapan pemilikan di bawah s 37(d) atau anggapan pengedaran di bawah s 37(da) Akta. Yang Arif semestinya hendaklah berpuas hati dengan keterangan pendakwaan pada elemen pengetahuan dan kawalan dan jagaan ke atas dadah dan elemen membawa, menyimpan dan mengedar dadah daripada suatu tempat ke dalam Malaysia dalam membuat keputusannya bahawa pendakwaan telah membuat kes prima facie di bawah s 39B Akta (lihat perenggan 9).

(4) Mahkamah gagal untuk memahami dapatan hakim perbicaraan di akhir kes pembelaan pada anggapan pengedaran apabila anggapan tidak digunakan oleh hakim perbicaraan pada akhir kes pendakwaan. Dengan mengguna pakai s 37(da) pada akhir kes pembelaan, hakim perbicaraan telah menterbalikkan dapatan awal terhadap pengedaran di bawah s 2 Akta. Dalam berbuat sedemikian, Yang Arif telah terkhilaf dalam pendekatannya (lihat perenggan 11).

(5) Responden mempunyai kawalan dan jagaan ke atas beg. Dalam percubaan untuk mentiadakan penegetahuan dadah yang dijumpai di dalam beg, responden menyatakan bahawa dia telah diberi amaran untuk tidak menghilangkan beg kerana ia mengadungi wang dan bahawa sebab mengapa dia telah meninggakan bag sandang tetapi dia terpaksa membawa beg tersebut bersamanya apabila dia keluar daripada Pejabat Immigresen (lihat perenggan 14).

(6) Pembelaan tidak mencabar bahawa responden telah meninggalkan beg di tong sampah apabila dikejar oleh SP7. Responden sebenarnya telah meninggalkan beg walaupun dia telah diberi amaran untuk tidak melakukan demikian kerana beg tersebut mengandungi sejumlah besar wang. Apa yang gagal diterangkan oleh responden adalah, jika dia tidak boleh kehilangan beg tersebut, mengapa dia telah meninggalkan beg tersebut di tong sampah. Ketiadaan apa-apa penjelasan terhadap aspek penting pembelaannya bahawa beg tersebut mengandungi wang menunjukkan bahawa versi responden tentang beg tersebut mengandungi wang dan bukannya dadah tidak boleh dipercayai atau berkemungkinan (lihat perenggan 16).]

Cases referred to

Duis Akim & Ors v PP [2014] 1 MLJ 49, FC (refd)
Isidro Leonardo Quito Cruz v PP [2013] 2 MLJ 1; [2013] MLJU 12, FC (refd)
Nasarudin Daud & Satu lagi lwn PP [2011] 3 CLJ 713, FC (refd)
PP v Abdul Manaf bin Muhamad Hassan [2006] 3 MLJ 193; [2006] 2 CLJ 129, FC (refd)
PP v Nik Ahmad Aman bin Nik Mansor [2002] 5 MLJ 641; [2002] 6 CLJ 369, HC (refd)

Teuku Nawardin Syamsuar v PP [2011] 3 CLJ 353, FC (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 12(2), 37(d), 37(da), 39B, 39B(2)

Appeal from: Criminal Trial No 45A-29 of 2012 (High Court, Johor Bahru)

Dalira bt Din (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.

Md Zahar bin Ngah (Wan Azlian bt Ahmad with him) (Zahar & Partners) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

[1] The respondent in this appeal was charged at the High Court Johor Bahru for trafficking in dangerous drugs, to wit 4329g of methamphetamine, an offence punishable under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act').

[2] We reproduce below the facts as set out by the learned trial judge:

> Pada 8 September, 2012 jam lebih kurang 12.20 tengahari di Bay Pemeriksaan Penumpang Pejalan Kaki (Inbound) di Bangunan Sultan Iskandar Johor Bahru, OKT diwaktu itu sedang berada di kaunter Imigresen bagi pengesahan passport bagi kemasukan ke Negara itu.
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> Keterangan menunjukkan OKT sedang membawa dua buah beg iaitu sebuah beg galas dan sebuah beg tarik beroda. Semasa proses pengesahan passport tersebut sedang berjalan, keterangan menunjukkan OKT telah melarikan diri dari pihak Imigresen dengan membawa sebuah beg tarik beroda tersebut.
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> Walau bagaimanapun, OKT berjaya ditahan oleh Pegawai Imigresen dan kemudiannya telah diserahkan kepada pihak Kastam untuk pemeriksaan lanjut.
>
> Pihak Kastam telah membuat pemeriksaan ke atas beg tarik beroda tersebut dan hasil pemeriksaan mendapati ianya mengandungi pakaian serta satu beg laptop. Apabila diperiksa beg laptop tersebut, didapati di bahagian lapisan 'inner' kiri dan kanan beg laptop tersebut mengandungi bungkusan berwarna gelap yang kemudiannya didapati mengandungi bahan serbuk berbentuk Kristal berwarna putih. OKT kemudiannya ditahan dan barang-barang kes dirampas oleh pihak Kastam. Barang-barang kes telah dihantar ke Jabatan Kimia dan hasil analisis oleh Ahli Kimia mendapati bahan serbuk berbentuk Kristal tersebut mengandungi Methamphetamine seberat 4,329 gram.

[3] At the end of the prosecution's case, the learned trial judge found that the prosecution had made out a prima facie case against the respondent where His Lordship had stated thus:

Melalui keterangan yang ditampilkan, tindakan serta kedudukan OKT semasa kejadian menunjukkan bahawa OKT bukan sahaja berada didalam milikan ke atas eksibit P14 yang kemudiannya dijumpai beg laptop yang didalamnya dijumpai 2 bungkusan P19B dan P19C yang kemudiannya didapati mengandungi dadah berbahaya, malahan berlaku perbuatan 'carrying' (membawa) sepertimana yang diperuntukkan di bawah Seksyen 2 Akta Dadah Berbahaya , 1952 yang mentakrifkan maksud pengedaran. Juga, keterangan menunjukkan yang selain dari ekshibit P14, P15 iaitu beg laptop juga turut berada didalam milikan OKT.

Disamping itu, adalah jelas bahawa OKT didalam kes ini juga mempunyai pemilikan secara langsung (actual possession) terhadap dadah-dadah tersebut iaitu sebelum dan semasa dia (OKT) ditahan.

Berdasarkan kepada keterangan yang ditampilkan, adalah jelas sewaktu kejadian, OKT sememangnya mempunyai milikan ke atas barang kes yang dijumpai didalam P15 dan OKT bersedia untuk berurusan dengannya (ready to deal with it).

[4] The respondent was thus called upon to enter his defence. The gist of his unsworn statement from the dock was that he had no knowledge of the drugs. The respondent mentioned a few names in his statement. His defence, essentially was that he had flew in to Singapore from Maputo, Mozambique and that he was asked to carry the bag which contained huge sums of money to be delivered to two guys in Singapore, but that at the last minute he was asked to take the bag to Malaysia instead.

[5] The learned trial judge found that the respondent had raised a reasonable doubt on the prosecution's case. His Lordship amended the charge to one under s 12(2) of the Act. The respondent was sentenced to 20 years imprisonment and ten strokes of the *rotan*.

[6] Aggrieved with the learned trial judges' decision to reduce the charge to one of possession, the prosecution appealed. We heard the appeal, at the end of which we allowed the prosecution's appeal. We set aside the order of the high court and we convicted and sentenced the respondent to death under the original charge of trafficking. The reasons now follow.

[7] The learned deputy public prosecutor canvassed only one ground of appeal, namely that the prosecution has proved its case beyond reasonable doubt under s 39B and that the learned trial judge erred in amending the charge to possession under s 12(2) of the Act after the defence case.

[8] We agreed with the learned trial judge that the prosecution has made out a prima facie case under s 39B of the Act and we found that the learned trial judge had made a correct finding that the respondent had actual possession of the drugs and was trafficking under s 2 of the Act. However at the end of the defence case we found that the learned trial judge had erred in two aspects, first,

when His Lordship found that presumption of trafficking under s 37(da) of the Act cannot be invoked and second, when His Lordship relied on the case of *Public Prosecutor v Nik Ahmad Aman bin Nik Mansor* [2002] 5 MLJ 641; [2002] 6 CLJ 369 in coming to his conclusion that there must be evidence on the element of transfer of control and custody of the drugs, before the definition of trafficking under s 2 of the Act could be applied.

[9] To recapitulate, at the end of the prosecution's case, the learned trial judge had found that the prosecution had made out a prima facie case. The learned trial judge had made an affirmative finding of possession of the drugs by the respondent and had found a prima facie case of trafficking under s 2 of the Act. His Lordship did not invoke any of the presumptions, either presumption of possession under s 37(d) or presumption of trafficking under s 37(da) of the Act. His Lordship must have been satisfied with the evidence of the prosecution on the element of knowledge and custody and control of the drugs and the element of carrying, keeping and transporting the drugs from somewhere into Malaysia in coming to his decision that the prosecution has made out a prima facie case under s 39B of the Act.

[10] However, at the end of the defence case His Lordship states:

> Di dalam satu kes yang diputuskan oleh Mahkamah Persekutuan, iaitu kes *Ibrahim Mohamad & Anor v PP* [2011] 4 CLJ 113, diputuskan:
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> It is trite law that possession is an important ingredient in the charge of trafficking. Unless there is a direct evidence of trafficking, the prosecution must prove the ingredient of 'possession' and the trial judge must make an affirmative finding of 'possession' before the presumption of trafficking under s 37(da) of the Act can be invoked (see the case of *Muhammed bin Hassan v PP* [1998] 2 CLJ 170).
>
> Keterangan-keterangan yang telah dikemukakan tersebut gagal mewajarkan Mahkamah ini menggunapakai anggapan mengedar seperti diperuntukkan di bawah Seksyen 37(da) Akta Dadah Berbahaya.
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> Tambahan pula, berdasarkan kepada keterangan-keterangan yang ada, definasi pengedaran seperti yang dinyatakan dibawah s 2 Akta yang sama tidak dapati diaplikasikan memandangkan tidak terdapatnya sebarang keterangan dari mana-mana saksi pendakwaan bagi mewajarkan mahkamah membuat suatu penemuan bahawa wujudnya elemen pemindahan kawalan dan jagaan. Didalam perkara ini, rujukan dibuat kepada keputusan suatu kes Mahkamah Tinggi didalam kes *Public Prosecutor v Nik Ahmad Aman Nik Mansor* [2002] 6 CLJ 369 yang berbunyi:
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> > To prove that the accused was trafficking, it would be necessary to establish that he transferred or at least intended to transfer possession (or at least custody and control) of the drug to another party. Trafficking in the context of the instance case could not be proved by mere passive possession alone. Simply by transporting, carrying, sending, delivering, procuring, supplying or distributing, which could have been perceivably carried out by the accused as the driver of the

car, it was insufficient to constitute an act of trafficking in absence of any evidence that drugs were to be transferred to or conveyed to another party.

Keadaan yang sama berlaku didalam kes dihadapan mahkamah ini. Keterangan yang ada menunjukkan bahawa semasa ditahan, OKT hanya memiliki dadah tersebut didalam milikannya tanpa sebarang keterangan berkenaan barang kes tersebut akan dipindahkan atau diserahkan kepada mana-mana pihak yang lain. Justeru itu, mahkamah memutuskan bahawa pihak pendakwaan telah gagal membuktikan akan kesemua elemen yang diperlukan bagi mewajarkan mahkamah menggunapakai peruntukkan s 37(da) Akta Dadah Berbahaya terhadap OKT ....

[11] We failed to comprehend the learned trial judge's finding at the end of the defence on the presumption of trafficking when the presumption was not invoked by the learned trial judge at the end of the prosecution's case. By applying s 37(da) at the end of the defence case, the learned trial judge was reversing his earlier finding of trafficking under s 2 of the Act. In so doing, it was our view that His Lordship has erred in his approach (see *Duis Akim & Ors v Public Prosecutor* [2014] 1 MLJ 49).

[12] On his finding that there was no evidence on the transfer of control and custody of the drugs from the respondent to any other third parties, we were of the view that the learned trial judge erred in his reliance on the High Court decision in *Nik Ahmad Aman* when there are string of authorities decided by the Federal Court which held that by definition under s 2 of the Act, trafficking includes carrying (see for example, *Public Prosecutor v Abdul Manaf bin Muhamad Hassan* [2006] 3 MLJ 193; [2006] 2 CLJ 129; *Teuku Nawardin Syamsuar v Public Prosecutor* [2011] 3 CLJ 353; *Nasarudin Daud & Satu lagi lwn Public Prosecutor* [2011] 3 CLJ 713; *Isidro Leonardo Quito Cruz v Public Prosecutor* [2013] 2 MLJ 1; [2013] MLJU 12).

[13] In finding that the respondent had raised a reasonable doubt on the prosecution's case the learned trial judge said:

Meneliti kepada keterangan yang ditampilkan secara keseluruhannya, terutamanya keterangan pembelaan dari OKT, pihak OKT telah berjaya membangkitkan suatu keraguan yang munasabah terhadap elemen pengetahuan. Penjelasan OKT telah berjaya mengenepikan kewujudan elemen mens rea. Hatta, tiada kelihatan apa-apa yang boleh ditakrifkan sebagai 'overt act' dipihak OKT. Asas-asas keputusan dicapai:

(i) Berdasarkan kepada keterangan tidak bersumpah OKT, yang mana Mahkamah menerimanya sebagai kredible, munasabah dan logic, OKT ini melalui perlakuannya jelas tidak berpengetahuan yang isi kandungan didalam beg troli tariknya (eksh P14) mengandungi dadah.

(ii) OKT ini seorang yang lurus dan tidak pernah terlibat dengan mana-mana kes jenayah di negaranya. (para kedua kenyataannya).

(iii) OKT ini berasal dari keluarga yang berpecah (broken family), terbiar serta hidup merempat di negaranya. Bersekolah hingga berumur 14 tahun sahaja. Tidak menyambung pembelajarannya.

(iv) Dengan tahap IQ rendah, OKT mudah dipergunakan oleh mereka yang tidak bertanggungjawab.

(v) OKT mempercayai kata-kata dari rakannya bernama Willie de Lange yang mengajaknya menemankan Willie ke Singapura bertujuan untuk menghantar wang.

(vi) OKT kemudiannya diperguna kesempatan oleh Peter, Willie dan Maggie yang mana mereka ini mengetahui akan masalah kehidupan yang susah di lalui oleh OKT.

(vii) Perjalanannya ke Maputo, Mozambique dan langsung ke Singapura merupakan perjalanannya serta pengalamannya yang pertama ke luar Negara. Segala urusan tiket, paspot dan penginapannya diuruskan oleh Peter.

(viii) Pada hari pelepasannya ke Singapura, seorang lelaki yang dia tidak tahu namanya telah memberikan kepadanya tiket penerbangan, USD700,100 metacas Mozambique untuk membungkus suitcase (beg troli) di lapangan terbang dan 100 metacas untuk tambang teksi. Menurutnya, lelaki tersebut mengatakan bahawa di sepanjang perjalanannya, ada orang akan mengikutinya dan memerhatikannya. Dia mempercayai ini.

(ix) Setibanya di airport Changi, dia telah melalui pemeriksaan pihak berkuasa tanpa sebarang masalah. Setibanya di hotel, dia menelefon Peter di Afrika Selatan untuk arahan lanjut. Peter telah memberinya nombor telefon Willie. Apabila dia menelefon Willie, Willie menyatakan yang dia telah berada di Malaysia. Willie telah mengarahkannya datang ke Malaysia.

(x) Destinasi ke Malaysia memeranjatkannya kerana dari awal lagi diberitahu yang destinasi yang ia perlu pergi ialah hanya Singapura.

(xi) Episod di kaunter Imigresen Johor Bahru selepas dia diminta menunggu, membuatkannya cuba menelefon Willie, tetapi tidak berjaya dihubungi. Keterangannya: 'So I went out together with the suitcase but left the back pack in the immigration office to call Willie. I brought the suitcase with me because all I know inside the suitcase is money. I have been warned not to loose the suitcase.'

[14] It was not in dispute that the respondent was in control and custody of exh P14. In attempting to negate the element of knowledge of the drugs found in exh P14, the respondent said that he was warned not to lose exh P14 as it contained money and that was the reason why he had left the bag pack (exh P16) but he had to carry with him exh P14 when he went out of the immigration office.

[15] We noted the following evidence of SP7 (rekod rayuan: pp 60–61):

> ... OKT ketika itu berada di ruang pejabat tunggu. Ketika saya buat kerja saya, saya terlihat OKT itu berlari keluar dari pejabat operasi bersama bagasinya. Tanpa membuang masa, saya kejar keluar untuk kejar OKT. Setelah saya keluar dari pejabat operasi, saya jerit 'Hoi!' setelah itu dia berhenti. Saya dekati dan tanya 'Why you went out?' tetapi dia hanya diamkan diri dan bercakap 'friend friend' itu sahaja. Saya tanya dia kenapa dia keluar, dia diam. Ketika itu bagasinya tiada ditangan dia. Saya tanya dimana bagasinya, dia diam. Bila tanya bagasi, dia jawab, 'friends' sahaja. ...
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> ...
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> Selepas itu saya bawa OKT balik ke pejabat operasi dan saya terlihat bagasi itu tersorok di tepi tong sampah ketika saya berpusing balik ke pejabat operasi. ... Seterusnya, saya tanya OKT kenapa sorok, dia jawab 'friends' dan diam diri. ....

[16] The defence did not challenge that the respondent had left exh P14 at the dustbin when he was chased by SP7. The respondent had in fact parted with exh P14 although it was his defence that he had been warned not to do so as exh P14 contained huge sums of money. What the respondent failed to explain was, if he could not lose exh P14, why then did he leave P14 at the dustbin? The absence of any explanation on this crucial aspect of his defence that the bag contained money, in our view, showed that the respondent's version about P14 containing money instead of drugs was not credible or probable.

[17] Further, the respondent had said the following in his statement about Willie (rekod rayuan: p 22):

> While staying in the old hospital, I met this one friend named Willie de Lange. ... He approach me one day and ask me if I am willing to take a trip with him to Singapore to deliver money ...,

The later part of respondent's statement however (rekod rayuan: p 23), disclosed that the respondent arrived in Singapore alone and despite Willie being his friend and that he had met Willie prior to coming to Singapore, the respondent had to call Peter in South Africa and it was Peter who had given Willie's phone number to the respondent. Looking at the evidence in totality, we found that the respondent had failed to raise a reasonable doubt on the prosecution's case.

[18] We therefore unanimously allowed the prosecution's appeal. We set aside the order of the High Court and we substituted with the order of conviction and sentence under the original charge of trafficking. The respondent was thereby sentenced to death by hanging in accordance with the law.

Order of the High Court set aside and respondent convicted and sentenced to death under original charge of trafficking.

Reported by Afiq Mohamad Noor